

CALIFORNIA GEOTHERMAL, INC.

IBLA 75-28

Decided April 7, 1975

Appeal from decisions of Idaho State Office, Bureau of Land Management, rejecting applications for noncompetitive leases of geothermal resources. I 7592, etc.

Affirmed.

1. Geothermal Leases: Applications: Generally

Where the applicant for a noncompetitive lease of geothermal resources is not the sole party in interest and the application is not accompanied by separate statements signed by each of the interested parties, setting forth the nature of the agreement between them and their qualifications to hold such interests in geothermal resources leases, the application must be rejected.

APPEARANCES: Eugene V. Cioncanell, Vice-President, California Geothermal, Inc., for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

California Geothermal, Inc., appeals from Idaho State Office, Bureau of Land Management, decisions dated May 28, and June 12, 1974, which rejected its applications 1/ for noncompetitive geothermal resources leases because of the failure of the applications to comply with the requirements of regulation 43 CFR 3202.2-5 relating to sole party in interest. In addition, each decision

1/ The decision of May 28, 1974, rejected these applications filed by California Geothermal, Inc., during the January 1974 filing period:

I-7592*	I-7668*	I-7731*	I-7778	I-7809	I-7593*
I-7676*	I-7735*	I-7780*	I-7812		
I-7612	I-7681	I-7737*	I-7785*	I-7814*	
I-7613	I-7684*	I-7748*	I-7787*	I-7816	

pointed out that other reasons existed for rejection of some of the applications, either in whole or in part, as the lands sought are within known geothermal resources areas (KGRA), 43 CFR 3200.0-5(k)(3); or were patented without any reservations to the United States; or that the application was not made for all available land within a section, 43 CFR 3210.2-1(c); or the application exceeded the statutory maximum of 2,560 acres, 43 CFR 3202.2(a).

Appellant concedes that patented lands and lands determined to be KGRA are unavailable, but it contends its applications were in substantial compliance with the regulations as to the showing of other parties in interest.

On each application, in response to the question: "6. Are you the sole party in interest?", appellant wrote "See Exhibit 'B' attached hereto.", and indicated "No" in the appropriate place on the application. Exhibit B with each application is as follows:

EXHIBIT "B"

Being part of Application to Lease Geothermal Resources - Form OMB - No. 42-R1688
(Non-Competitive Lease) by California Geothermal, Inc.

fn. 1 (continued)

I-7618*	I-7685*	I-7753*	I-7788*	I-7817*
I-7627*	I-7704	I-7758	I-7789	I-7829
I-7644	I-7705*	I-7759	I-7791	I-7783*
I-7645	I-7714	I-7761*	I-7795*	I-7836*
I-7647*	I-7715*	I-7773	I-7796*	I-7842*
I-7663*	I-7726*	I-7777	I-7804*	I-7843
			I-7806*	I-7848

The decision of June 12, 1974, rejected these applications filed by California Geothermal, Inc., during the February 1974, filing period:

I-7962*	I-7968*	I-7974*
I-7963	I-7969*	I-7975*
I-7964	I-7970*	I-7976*
I-7965	I-7971*	I-7977*
I-7966	I-7972*	I-7978*
I-7967*	I-7973*	I-7979*

The serial numbers included in this appeal are noted by an asterisk "*".

Pursuant to Section 6 of the Form OMB - No. 42-R1688, the following outlines the corporations and their varying working interests in the application for a non-competitive lease made by California Geothermal, Inc.:

<u>Company Name</u>	<u>Percentage Working Interest</u>
Francana Exploration Inc.	20%
Siebens Oil & Minerals, Inc.	20%
Trans-Canada Resources (U.S.) Inc.	20%
Canada Northwest Oils, Inc.	10%
Albany Oil & Gas, Ltd.	10%
California Geothermal, Inc.	20%

The parties hereto do not hold in excess of 20,480 acres in the state covered by aforesaid application, and qualifying statements have been submitted for each of the following:

<u>Company Name</u>	<u>Serial Number</u>
Francana Exploration Inc.	CA 985
Siebens Oil & Minerals, Inc.	CA 989
Trans-Canada Resources (U.S.) Inc.	CA 990
Canada Northwest Oils, Inc.	CA 988
Albany Oil & Gas, Ltd.	CA 987
California Geothermal, Inc.	CA 986

Appellant states that the term "working interest" has a well-defined meaning in the mineral industry, that working interest holders have operating rights under the lease subject to payment of their pro rata percentage of operating expenses, so that setting forth the percentage of working interest held does set forth the nature of the agreement between the named parties.

Appellant further contends that the references in Exhibit B to serial numbers of files in the California State Office, BLM, satisfies the requirement as to qualification of all interested parties.

Appellant admits the applications were not in strict compliance with the regulations but argues that no information required under the regulations was withheld so that no disservice to the public interest would occur if the applications are accepted.

Instructions for completing the application are on the reverse side of the form.

GENERAL INSTRUCTIONS

Submit copies of application typewritten or printed plainly, and signed in ink. *

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If additional space is needed in furnishing any of the required information, it should be prepared on additional sheets, initialed, and attached to your application.

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Item 6 - Party in Interest - Indicate whether sole party in interest or not. If not, submit, at the time application is filed, a signed statement setting forth names of other interested parties and the nature of the agreement between them. All interested parties must furnish evidence of their qualifications to hold an interest in the lease when application is filed.

* * * * *

The regulation, 43 CFR 3202.2-5 contains this pertinent language:

§ 3202.2-5 Showing as to sole party in interest.

Each application must indicate whether the applicant is the sole party in interest. Where the applicant is not the sole party in interest, separate statements must be signed by each of the parties and by the applicant setting forth the nature of the agreement between them. All interested parties must furnish evidence of their qualifications to hold such lease interest. These separate statements must be filed in the proper BLM office with the application, except as provided in § 3211.2 of this chapter. 2/ (Emphasis added).

The Department's oil and gas leasing regulations, which served as a model for the geothermal resources leasing regulations, at

2/ The exception applies only to applications filed for lands formerly under lease for geothermal resources.

43 CFR 3102.7, 3/ require similar statements as to the sole party in interest must be made in connection with oil and gas lease offers. The Department has consistently held that this regulation is mandatory and that an oil and gas lease offer must be rejected where the offer contains the name of an additional party in interest and the statement of interest, copy or explanation of the agreement between the parties and evidence of the qualifications of the additional party are not filed within the time required by the regulation. See, e.g., Mary West, 17 IBLA 84 (1974); Gill Oil Company, 2 IBLA 18 (1971); Paul Harvey, A-30552 (June 24, 1966), aff'd. Harvey v. Udall, 384 F.2d 883 (10th Cir. 1967), rehearing denied, December 14, 1967.

An application that does not satisfy a mandatory requirement of the Department's regulations must be rejected whether or not the regulation specifically provides for such action. E & H Investments, Inc., 19 IBLA 14 (1975); Union Oil Company of California, 71 I.D. 287 (1964); Celia R. Kammerman, 66 I.D. 256 (1959).

So, in this case, where the applications were not in compliance with the mandatory requirements set out in 43 CFR 3202.2-5, by failing to submit the necessary signed statements as to the nature of the agreement between the parties in interest indicated in the application, the applications must be rejected.

We find it unnecessary for us to comment upon or to discuss the other deficiencies of the applications adverted to in the BLM decision.

3/ § 3102.7 Showing as to sole party in interest. - A signed statement by the offeror that he is the sole party in interest in the offer and the lease, if issued; if not he shall set forth the names of the other interested parties. If there are other parties interested in the offer a separate statement must be signed by them and by the offeror, setting forth the nature and extent of the interest of each in the offer, the nature of the agreement between them if oral, and a copy of such agreement if written. All interested parties must furnish evidence of their qualifications to hold such lease interest. Such separate statement and written agreement, if any, must be filed not later than 15 days after the filing of the lease offer.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Joseph W. Goss
Administrative Judge

